

REMARKS

Claims 1-28 are pending in the present application.

Rejections Under 35 U.S.C. 102(e)

The Examiner rejected claims 1-28 under 35 U.S.C. 102(e) over U.S. Patent Publication No. 2002/0181545 to Babkes (hereinafter “Babkes”). Applicant respectfully submits that Babkes shares a common assignee and a common inventor with the present application. An affidavit under 37 C.F.R. §1.132 is submitted herewith to antedate the Babkes reference. Applicant submits that Babkes is therefore unavailable as a reference under 35 U.S.C. 102(e) and that each of the rejections relying on Babkes should be withdrawn.

Rejections Under 35 U.S.C. 103(a)

The Examiner rejected claims 1- 28 under 35 U.S.C. 103 (a) over U.S. Patent No. 5,347,496 to McBean, Sr. (hereinafter “McBean”) in view of U.S. Patent No. 3,681,991 to Eberly, Jr. (hereinafter “Eberly”). In the Office Action mailed April 23, 2003, the Examiner admitted “McBean does not disclose the temperature sensor of the removable module being in a probe connected to the removable module, wherein the removable module is capable of storing the temperature sensitive probe and a supply of disposable covers...” In the present Office Action, the Examiner indicated that:

“Eberly discloses an electronic thermometer comprising a hand-held module (26) that includes a temperature sensor in a probe (34) that is connected to the module by a cable.... The module (26) stores the temperature sensitive probe in a chamber (32) in order to protect the probe when it is not being used. Eberly also teaches providing the module with a chamber (86 or 88) for housing a supply of disposable probe covers in order to have clean probe covers readily available to a person using the module when taking temperature measurements. The probe cover supply storage chamber is permanently attached to the probe storage

chamber (see figure 1) ...it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the removable module disclosed by McBean by placing the temperature sensor in a probe connected to the module (thereby forming a 'probe assembly'), as taught by Eberly when utilizing the module to measure the temperature of human beings since Eberly discloses that using a probe is beneficial since it facilitates measuring the temperature of a living body. Furthermore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the removable module disclosed by McBean by adding a chamber in the module for storing the probe and a chamber in the module for storing a supply of disposable probe covers as taught by Eberly, in order to store the probe and protect it when it is not being used, and allow a person using the module to have clean probe covers readily available when using the module to take temperature."

Contrary to the Examiner's characterization, Eberly discloses "an electronic thermometer having a casing, (and) a probe removably mounted in a probe well in the casing ..." (Abstract) The thermometer disclosed by Eberly is a complete electronic thermometer in a single unit which also has storage for probe covers in the casing. Thus, Eberly is even further from the suggesting the present disclosure than was U.S. Patent No. 4,260,058 to Paull et al. (hereinafter "Paull") which Applicant distinguished in Applicant's response to the Office Action dated April 23, 2003.

Like Paull, Eberly is another reference in which temperature probes share a common source of probe covers. This provides an opportunity for cross contamination which is avoided by the present disclosure as one of its primary advantages. Nothing in Eberly teaches or suggests any modularity which could qualify the casing to be analogous with a module, particularly a removable module. Accordingly, Eberly does not teach or suggest "the temperature sensor of the removable module being in a probe connected to the removable module, wherein the removable module is capable of storing the temperature sensitive probe and a supply of disposable covers" which the Examiner admitted is not disclosed in McBean.

Applicant submits that therefore no combination of Eberly and McBean teaches or suggests "...a removable module having a memory and capable of storing a temperature sensitive probe and a supply of disposable probe covers, wherein said memory stores calibration information; and a temperature calculating unit removably mating to said removable module" as claimed in the present application. In fact, Eberly teaches away from the present invention by

disclosing an electronic thermometer having two probes (FIG. 9) one for rectal use, the other for oral use, and a probe cover storage chamber for each in the same casing. This type of device actually creates one of the dangerous problems that is solved by the present invention.

Furthermore, no motivation to combine Eberly and McBean is suggested in any of the references, or in the knowledge of persons having ordinary skill in the art at the time the invention was made. Applicant respectfully submits that any motivation the Examiner might suggest which includes avoidance of cross contamination is not available without improperly using the teachings of the present disclosure in hindsight.

“Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art” (MPEP 2143.01). Applicants submit that even if each and every element of the present invention were present in the cited art (which Applicants maintain they are not), no motivation to combine exists without the use of improper hindsight and without looking outside of the cited reference. None of the references suggests the desirability of the resultant combination.

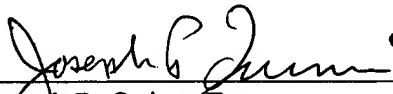
Since none of the cited references alone or in any combination with the other cited references teaches or suggests each and every element of independent claim 1 -28 combined according to the claims, the Examiner has not made out a *prima facie* case of obviousness under 35 U.S.C. 103(a). Accordingly, the rejections of claims 1-28 are improper and should be withdrawn.

In light of the foregoing remarks, Applicants request the Examiner to withdraw the rejections to claims 1-28. Applicants believe that this application is now in condition for allowance and such action at an early date is earnestly requested.

Please charge any fees or credits to deposit account No. 50-0369. Also, in the event any additional extensions of time for responding are required for the pending application(s), please treat this paper as a petition to extend the time as required and charge deposit account No. 50-0369 therefore.

Respectfully submitted,

1/5/04
Dated: _____



Joseph P. Quinn, Esq.
Reg. No. 45,029
Customer No. 21710
Attorney for Applicants

BROWN RUDNICK BERLACK ISRAELS LLP
Box IP, 18th Floor
One Financial Center
Boston, MA 02111
Tel: 1-617-856-8396
Fax: 1-617 856-8201